IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8841 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SANDHYABEN ROHITKUMAR PATEL

Versus

STATE OF GUJARAT

Appearance:

MR MB FAROOQUI for Petitioner

Mr. U.R. Bhatt, AGP for Respondents Nos. 1 to 3.

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 25/04/2001

ORAL JUDGEMENT

Heard the learned counsel for the respective parties. Rule. Mr. U.R. Bhatt, waives service of Rule.

2. On a joint request of learned counsel this matter is taken up for final hearing today.

3. This is a petition under Article 227 of the Constitution of India wherein the petitioner challenges the levy of and imposition of demand under the Gujarat Entertainment Tax Act and Rules thereunder, confirmed by

the impugned order at Annexure "H" hereto. The petitioner herein was running a cinema theatre (as a partner), the theatre being situated at Jetpur, District-Rajkot.

4. The respondents had occasion to impose a surprise check to the cinema theatre in question and on a perusal of the records etc., issued show cause notice dated 2nd January 1992. The petitioner replied thereto and as a result of the hearing of the show cause notice, an order was passed against the petitioner-theatre. An appeal was preferred therefrom and on disposal of the appeal a further revision was also preferred. The matter was remanded back to the prescribed officer who once again passed an order adverse to the petitioner which led to the appeal, and the rejection of the appeal led to a revision, and consequently the present petition.

5. It may be noted here at this stage that the entire demand as confirmed in the impugned order has been deposited by the petitioner during the pendency of the present petition.

6. The petitioner has raised in the present petition a number of grounds against the impugned order imposing the liability in respect of entertainment tax as also the penalty.

6.1. However the short question on which this petition is required to be allowed is that the revisional authority has failed to consider the fact that the cinema was subjected to a check {prior to the date of the surprise checking} on 4th of October 1991. On 4th of October 1991 no deficiency or irregularity was found. Thus, if at all the surprise check on 31st of October 1991 showed any deficiency or irregularity, the tax and/or penalty in respect of such deficiency or irregularity could not be imposed in respect of any period prior to 4th of October 1991. This aspect of the case has been completely ignored by the revisional authority. It appears that there is considerable substance in this contention which requires serious consideration by the revisional authority.

7. In the premises aforesaid the impugned order passed by the Entertainment Tax Commissioner at Annexure "H" to the petition is quashed and set aside and the matter is remanded back to the revisional authority (The Entertainment Tax Commissioner) for consideration of the aforesaid question on merits and in accordance with law. The revisional authority shall hear and decide the

revision application again as expeditiously as possible and preferably within a period of 2 months from the date of receipt of the writ of this direction. It is understood that the petitioner shall be entitled to be heard before the revisional authority in respect of all the grounds which may be urged before him, including the grounds raised in the present petition, and the said revision shall then be decided by a speaking order.

8. Rule is made absolute accordingly with no order as to costs. Direct service permitted.

rmr. ======